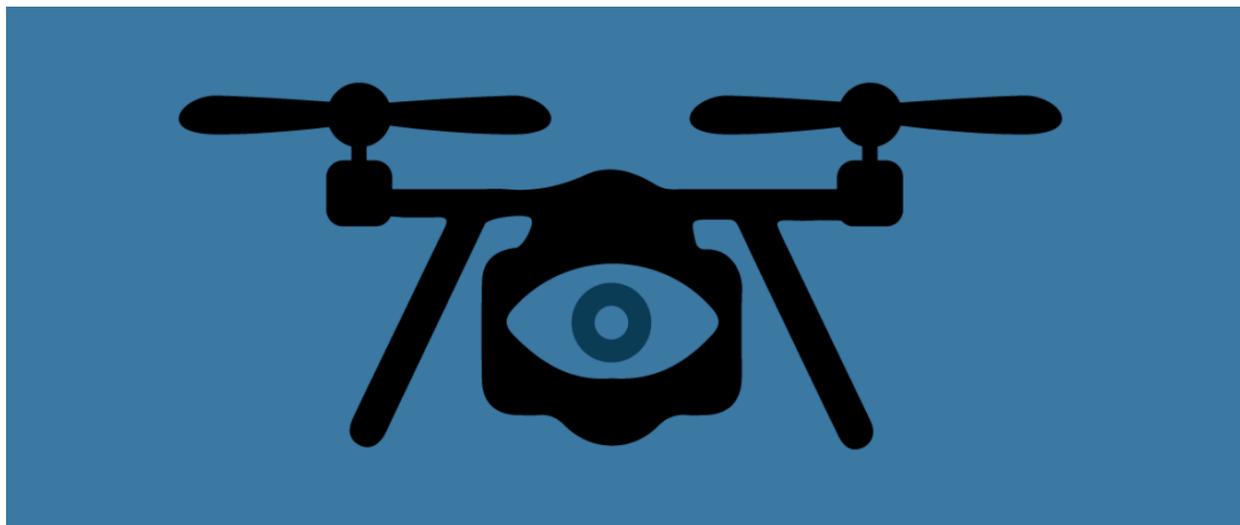




Drones or UAVs

A Guide for Criminal Defense Attorneys



1. What are they and how do they work?
 - a. Drones or unmanned aerial vehicles (UAV), also known as remote-controlled planes, quadrotors or quadcopters, are capable of highly advanced surveillance and can carry various types of equipment including live-feed video cameras, infrared cameras, heat sensors, and radar.
 - b. Some military versions can stay in the air for hours or days at a time, and their high-tech cameras can scan entire cities, or alternatively, zoom in and read a milk carton from 60,000 feet. They can also carry wifi-crackers and fake cell phone towers (CSSs) that can determine your location or intercept your texts and phone calls.
 - c. Drone manufacturers have also developed models that carry and deploy “less lethal” weapons such as tasers or rubber bullets.
 - d. Drones are used increasingly by public and private entities, especially after the FAA ruling requiring registration of non-commercial drones was struck down in 2017. <https://eff.org/dronenoreg>

2. How are drones used?
 - a. Government agencies primarily use drones for search-and-rescue operations, surveying land and infrastructure, and criminal apprehension operations by law enforcement.
 - i. Cities that have passed municipal regulations restricting government drone use (e.g., SF) have sometimes implemented

minimization measures like limiting drone video storage and retention of personally-identifiable information.

- ii. Nonetheless, there is a concern that drones may be used for more generalized surveillance, or that video collected incidentally to search-and-rescue, land surveying or police chase operations may be subjected to facial recognition or other biometric analysis.
 - b. Private parties use drones mainly for recreation and journalism. In some instances, property owners have objected to and sued over drones flying over their property.
3. Drone laws
- a. Some state statutes limit use of drones by public entities, private individuals, or both. Some states permit police departments to attach lethal or nonlethal weapons to drones.
 - b. For a list of drone laws by state: <https://eff.org/dronestatelaws>
 - c. There is little clarity about airspace usage rights under 400 feet, the FAA's altitude limit for small-drone operators. Though historically, the air above a property was often considered to be part of that property, the U.S. declared anything higher than 500 feet public airspace in the 1950s.
4. Drone and drone-related cases:
- a. FAA regulations were triggered in part by the 1946 Supreme Court decision in *United States v. Causby*, 328 U.S. 256 (1946), in which a chicken farmer sued the government to limit military flights over his property. SCOTUS held that military flights over private property was a physical invasion akin to a regulatory taking, which suggests that operating a drone over private property *may* constitute trespass.
 - b. D.Conn: *Huerta v. Haughwout*, No. 3:16-CV-358, 2016 WL 3919799, at *4-5 (July 18, 2016): Court grants order enforcing FAA subpoenas to investigate allegations of weaponized drone use by private drone operators.
 - c. WDKY: *Boggs v. Merideth*, No. 3:16-CV-00006-TBR, 2017 WL 1088093, at *5 (March 21, 2017): Court dismisses civil suit by drone operator against his neighbor for shooting down his drone while it was flying over his neighbor's property.
5. How do I learn more?
- a. Visit: <https://eff.org/drones> and <http://dronelawjournal.com/>

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